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CONCORD, N.H.

Honorable C. Edward Bourassa
55 Silver Street
Manchester, New Hampshire

Dear Councilor Bourassa:

You have inquired regarding the constitutionality of levying a tobacco tax upon the basis of the cost to the wholesaler, plus the federal excise tax.

It is my opinion that this method of levying the tax is constitutional. In Favens v. Attorney-General, 91 N.H. 115, at 119 the court said:

"The method of determining the value is eminently practical, and there is nothing to indicate that the tax commission, whose duty it is to administer the act, cannot ascertain the usual selling price of tobacco products with reasonable accuracy. The fact that no deduction is made for the Federal excise tax paid by the manufacturers is unimportant. The retailer does not pay the Federal tax 'except as it is included in the price charged by the wholesaler.' Annotation 110 A.L.R. 1485, 1491, citing People v. Warner, 364 Ill. 594."

Very truly yours,

John W. Hassikas
Assistant Attorney General

JWK:HP

CC: Honorable Sherman Adams